

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2005, No. 20-Z,
and Meeting of May 5, 2005.)**

(NOTE: See Updated Informative Digest changes shown in **bold face** type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861(c), 6750 and 10502.6 of the Fish and Game Code, and Sections 36725(a) and 36725(e) of the Public Resources Code and to implement, interpret or make specific Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 5521, 6653, 8420(e) and 8500 of the Fish and Game Code, and Sections 36725(a) and 36725(e) of the Public Resources Code, proposes to amend Section 632, Title 14, California Code of Regulations, relating to Marine Protected Areas.

Updated Informative Digest/Policy Statement Overview

State law (**Section 1590, Fish and Game Code**) authorizes the Commission to designate, delete, or modify state marine managed areas (MMAs). Authorization is also provided in subsection 36725(a), Public Resources Code. In addition, in subsection 36725(e), Public Resources Code, the Commission may regulate commercial and recreational fishing and any other taking of marine species in MMAs.

The existing regulation of Section 632, Title 14, California Code of Regulations (CCR), defines State Marine Parks and State Marine Conservation Areas and provides information on authorized uses within those areas. The classification of those areas is in accordance with the Marine Managed Areas Improvement Act (MMAIA) commencing with Section 36600, Public Resources Code.

Nine areas originally designated by the Legislature as marine life refuges were reclassified in 2004 as State Marine Parks under the authority of the MMAIA. **Six of these areas were historically productive for the commercial spiny lobster fishery and lobster take has been allowed in these areas notwithstanding their establishment as marine life refuges. The fishery does not otherwise compromise the resource values of these areas.** The six areas are: Robert E. Badham State Marine Park, Irvine Coast State Marine Park, Laguna Beach State Marine Park, South Laguna Beach State Marine Park, Niguel State Marine Park, and Doheny State Marine Park. With the designation of these six areas as State Marine Parks, there is now a discrepancy between what has been a long-standing use in those areas and the type of use provided for under the state marine park designation as defined in the MMAIA. **The proposed regulation change would re-designate the status of these six areas to State Marine Conservation Areas to allow access for the commercial lobster industry.**

State law (sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set conditions for the commercial lobster fishery. The proposed regulatory change

will not change any conditions for that fishery or affect the status of the spiny lobster stocks.

In addition, Doheny State Marine Park's name is proposed to change to Doheny Beach State Marine Conservation Area to differentiate it from the existing Doheny State Marine Conservation Area.

The special closure regulations for San Miguel and Anacapa Islands are currently listed in subsections 632(b)(43)(B) and 632(b)(51)(B), respectively. These regulations are proposed to be moved into separate subsections, 632(b)(43) and 632(b)(52), to be consistent with the marine protected area regulations for those islands. These proposed changes will clarify the regulations and help increase public understanding and compliance.

The landing permit reference in subsection 632(b)(43)(B) will be removed as it is no longer required by the National Park Service. The sea urchin permit reference in subsection 632(b)(43)(B)1.b. will be removed as sea urchin permits are not site specific. Also the coordinates for Judith and Castle Rocks are proposed to be added and all of the subsections after 632(b)(43) will be renumbered.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Board of Supervisors Chambers, 1050 Monterey Street, 2nd floor, San Luis Obispo, California on Friday, August 19, 2005, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 12, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 16, 2005. Oral and written comments will be accepted at the Commission's August 19, 2005, at the hearing in **San Luis Obispo**, CA. All comments must be received no later than August 19, 2005, at the hearing in **San Luis Obispo**, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert Treanor or Sherrie Koell at the preceding address or phone number. **Mr. John Ugoretz, Nearshore Ecosystem Coordinator, Department of Fish and Game, phone (831) 649-2893, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed action serves to clarify and sanction historical commercial and recreational areas and practices to abate economic impacts and financial hardship to individuals and businesses.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Robert R. Treanor
Executive Director

Date: June 21, 2005